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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,485	03/09/2004	Vahid Saadat	021496-000130US	3298
40518 7590 02/21/2007 LEVINE BAGADE HAN LLP 2483 EAST BAYSHORE ROAD, SUITE 100 PALO ALTO, CA 94303			EXAMINER KASZTEJNA, MATTHEW JOHN	
			ART UNIT	PAPER NUMBER
			3739	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/21/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	Application No. 10/797,485	Applicant(s) SAADAT ET AL.	
	Examiner Matthew J. Kasztejna	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 67-80, 82-85 and 87-94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 67-80, 82-85 and 87-94 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Notice of Amendment*

In response to the amendment filed on November 29, 2006, amended claim 67-68, 70-71, 73-75, 77-78, 80, 82, 85, 87, 91 and 93; canceled claims 81 and 86; and new claim 94 are acknowledged. The following new grounds of rejection are set forth:

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 67-80, 82-85 and 87-93 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Application Publication No. 2003/0045778 to Ohline et al.

**In regards to claims 67-68, 85, 87-89 and 92-94**, Ohline et al. disclose an endoluminal apparatus comprising: an elongated main body 21 having a proximal end, a distal end and at least one lumen extending through the main body (see paragraph 0015 and 0052), the main body having at least a first section 28 near the proximal end and a second section 26 near the distal end, and with the first section comprising a plurality of link (see paragraphs 0013-0014), wherein the first section may be selectively switched between a substantially flexible condition and a substantially rigid condition

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(see paragraphs 0010-0014), wherein the second section is steerable relative to the first section (see Figs. 2-6 and paragraph 0009).

**In regards to claim 69**, Ohline et al. disclose an endoluminal apparatus, comprises an atraumatic tip having at least one opening corresponding to the at least one lumen (see Fig. 2).

**In regards to claims 70**, Ohline et al. disclose an endoluminal apparatus, wherein the second section may be switched between a flexible state and a substantially rigid state independently of the first section (see Figs. 8a-c and 12a-f paragraphs 0014-0015).

**In regards to claims 71-74**, Ohline et al. disclose an endoluminal apparatus, with substantially each link in the first section configured to allow partial rotation relative to adjacent links and with the links arranged so that the first section can bend in at least two dimensions (see Figs. 6a-e and paragraphs 0009-0014).

**In regards to claim 75**, Ohline et al. disclose an endoluminal apparatus, further comprising at least one tensioning element routed through the elongated main body, wherein compression of the plurality of adjacent links by a tensioning element places at least the first section, or second section or both sections into the substantially rigid condition (see Figs. 6a-e and paragraphs 0070-0076).

**In regards to claims 76-79**, Ohline et al. disclose an endoluminal apparatus, further comprising at least two liners extending along a length of the elongated main body (see Figs. 6a-e and paragraphs 0072-0075).

**In regards to claims 80 and 82-83**, Ohline et al. disclose an endoluminal apparatus, further comprising an endoscope extendable through the main body (see Fig 2 and paragraphs 0008-0009).

**In regards to claims 84**, Ohline et al. disclose an endoluminal apparatus, further comprising a Y-port located along the first section, wherein the Y-port is in communication with at least one lumen extending through the elongated main body (see Fig. 2).

**In regards to claims 90-91**, Ohline et al. disclose an endoluminal apparatus, with substantially each first link having a contoured front surface adapted to engage with a contoured back surface of an adjacent first link and at least one lumen extending there through (see Figs. 6a-e and paragraphs 0014-0015).

**In regards to claim 94**, Ohline et al. disclose an endoluminal apparatus, with the second section comprising a plurality of links (see Fig. 2 and paragraph 0014-0015 and 0047). Ohline et al. teaches that the distal portion 24 is also a controllable segment.

### ***Response to Arguments***

Applicant's arguments with respect to claims 67-93 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJK 

2/12/07



LINDA C. M. DVORAK  
CUSTOMER SERVICE EXAMINER  
2/12/07